

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

FILED

MAY 7 2003

DAVID W. DANIEL, CLERK  
US DISTRICT COURT  
E. DIST. N. CAROLINA

FELIPE DE JESUS DE LUNA-GUERRERO and )  
BALDOMERO GUTIERREZ DE LUNA and )  
LUIS MANUEL DE LUNA REYES, on )  
behalf of themselves and all other similarly )  
situated persons, )

Plaintiff, )

v. )

THE NORTH CAROLINA GROWER'S )  
ASSOCIATION, INC., and MARCUS )  
THIGPEN, on behalf of himself and all )  
other similarly situated members of the )  
North Carolina Growers Association, Inc., )

Defendants. )

Civil Action No.:  
4:02-CV-173-H(4)

**CONSENT ORDER**

The current Plaintiffs and Defendants in this action, by and through their respective counsel, hereby consent to the entry by the Court of the following Consent Order, in order to resolve certain issues expeditiously, to do justice for all, and to minimize further legal expense for the Parties.

**A. Definitions**

1. Parties – The term “parties” as used in this Order shall mean:
  - (a) any person(s) or entity that is named as a plaintiff or The North Carolina Growers Association, Inc. (“NCGA”) and Marcus Thigpen ,
  - (b) any attorney that has entered or does enter an appearance in the above-captioned lawsuit, and the law firm of such attorney,

(c) the employee(s) or agent(s) of any attorney or law firm which has entered or does enter an appearance in the above-captioned lawsuit where such employee or agent will have contact with H2A workers on behalf of such firm,

2. The North Carolina Grower's Association, Inc. ("NCGA") – The terms "North Carolina Grower's Association" or "NCGA" as used anywhere in this Order shall include The North Carolina Grower's Association, Inc., any employee(s) and any agent(s) or field representative(s) of The North Carolina Grower's Association, Inc. who is not employed by The North Carolina Grower's Association, Inc. pursuant to the H2A program and who will have contact with H2A workers on NCGA's behalf, any successor of The North Carolina Grower's Association, Inc., International Labor Management Corporation, and any future entity that is owned or controlled by The North Carolina Grower's Association, Inc.

**B. Communications With Putative Members of Plaintiff Class**

The Parties shall not undertake, directly or indirectly, any action(s) to institute communications with any putative members of a plaintiff class or collective action in this case, concerning matters relating to this case.

However, nothing contained herein shall be construed as prohibiting counsel for a named plaintiff or counsel for a named defendant from engaging in any such communications when that communication was affirmatively initiated by putative class or collective action members, nor shall it be construed as prohibiting counsel for

the named plaintiffs from communicating with the named plaintiffs, or counsel for the named defendants from communicating with the named defendants.

**C. Notice Regarding Consent Order**

The NCGA or its President, Stan Eury, shall distribute a copy of this Consent Order to: (a) any employee(s), agent(s), or representative(s) of defendant Thigpen who is not employed by defendant Thigpen pursuant to the H2A program who will have contact with H2A workers on behalf of the NCGA or Thigpen, and (b) all members of The North Carolina Grower's Association, Inc., any employee(s), agent(s) or field representative(s) of The North Carolina Grower's Association, Inc. who is not employed by The North Carolina Grower's Association, Inc. pursuant to the H2A program and who will have contact with H2A workers on NCGA's behalf, in order to provide notice to those persons and entities of the prohibition contained in this Order. In addition, Defendant North Carolina Grower's Association shall send a letter on their letterhead to each member of the NCGA, stating that it is NCGA policy that member growers not communicate with any member of the putative plaintiff class(es) or collective action concerning any matters related to this action.

The terms and conditions of this Consent Order shall be implemented immediately upon the signature of counsel for the named Plaintiffs and named Defendants where not otherwise specifically stated, and shall remain in effect unless and until voided or otherwise modified by the Court.

The provisions of this Consent Order shall become null and void upon the Court's determination that any of the named plaintiffs as listed in plaintiffs' Second Amended

Complaint are not adequate class representatives, upon the Court's ruling on Plaintiffs' Motion for Bilateral Certification of NCWHA and Contract Claims for Non-Payment of Wages When Due, upon the Court's ruling on Defendants' Motion for Summary Judgment, or upon the Court's ruling on Plaintiffs' Motion for Conditional Certification of Collective Action and to Send Court-Approved Notice to Putative Members of Collective Action Pursuant to 29 U.S.C. § 216(b) , whichever occurs first.

For good cause shown, either party may move the Court for modification of this Order.

For the duration of this Consent Order, the Court, upon motion of either Plaintiffs or Defendants, shall ensure compliance with the terms of this Order by whatever means the Court determines are necessary and appropriate.

#### **AGREEMENT AND CONSENT**

This Consent Order was agreed to and signed by the undersigned attorneys on behalf of their respective clients this 25 day of April, 2003.

#### **COUNSEL FOR DEFENDANTS**

#### **COUNSEL FOR PLAINTIFFS**

CONSTANGY, BROOKS & SMITH, LLC    LAW OFFICES OF ROBERT J. WILLIS

BY: 

W.R. Loftis, Jr., Esq.

N.C. State Bar # 2774

100 N. Cherry Street, Suite 300

Winston-Salem, NC 27101

(336) 721-1001

BY: 

Robert J. Willis, Esq.

N.C. State Bar #10730

P.O. Box 1269

Raleigh, NC 27602

(919) 821-9031

NORTH CAROLINA JUSTICE AND  
COMMUNITY  
DEVELOPMENT CENTER  
P.O. Box 28068  
Raleigh, NC 27611  
(919) 856-2144

BY: Carol L. Brooke  
Carol L. Brooke, Esq.  
N.C. State Bar # 29126

BY: Jack Holtzman  
Jack Holtzman, Esq.  
N.C. State Bar #13548

SO ORDERED, this 6<sup>th</sup> day of May, 2003.

Malcolm J. Howard  
Honorable Malcolm J. Howard  
United States District Judge